FILED

No. _____ 09-620 NOV 4 - 2009

OFFICE OF THE CLERK

In The Supreme Court of the United States

JONATHAN ROSE,
INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF DORA BROWN ROSE,
Petitioner,

v.

MT. SINAI MEDICAL CENTER, STEVEN SONENREICH
AND DR. NATHAN SEGAL, M.D.,
Respondents.

On Petition for Writ of Certiorari
to the Third District Court of Appeal, Florida

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED:

The Miami-Dade Florida Circuit Court dismissed Petitioner's case for failure to abide by a court order to timely replace his attorney, without making a finding that the violation was intentional, willful or contumacious as required by Florida Supreme Court case: Commonwealth Federal Savings and Loan Association v Tubero 569 So. 2d 1271 (FL 1990). Responding to an appeal to the 3rd District Florida Court of Appeal, defense (Respondent here) argued that the ruling of dismissal was "right for the wrong reason," that the case would be subject to summary judgment on the merits if the case were to proceed. The case at point of dismissal and appeal was before the parties would likely develop the lower court record with depositions and affidavits that could have been filed if there were a motion for summary judgment in the trial court. The Florida Court of Appeal after briefing and argument affirmed the dismissal without opinion, but with a one-word ruling: "affirmed." The parties were thus left not knowing the basis for the ruling. For example whether the Court of Appeal ignored the Tubero case, or acknowledged and followed the argument on "right for the wrong reason". The Florida Supreme Court dismissed application for leave, before response or briefing. The Court of Appeal ruling raises two questions:

(1.)Should the United States Supreme Court resolve the difference between

Florida and Oregon's "right for the wrong reason" Supreme Court rulings, to favor Oregon's Supreme Court case law: "Even if the record contains evidence sufficient to support an alternative basis for affirmance, if the losing party might have created a <u>different</u> record below had the prevailing party raised that issue, and that record could affect the deposition of the issue, then we will not consider the alternative basis for affirmance." – Outdoor Media Dimensions Incorporated, an Oregon corporation vs State of Oregon et al Supreme Court of Oregon 20 P 3rd 180 (Or. 2001) 1998

(2.) Should the Florida Court of Appeal be required to write at least a terse opinion rather than a one-word "affirmed" opinion if it affirms a lower court ruling using the "right for the wrong reason" doctrine if it does not use the protections of Oregon's version of the "right for the wrong reason" which limits the doctrine to cases in which the record below could not be developed as a different record?

ALTERNATIVELY, should The United States Supreme Court certify to the Florida Supreme Court to resolve issue (2) as permitted and encouraged by Florida Rules of Appellate Procedure 9.030 (2)(C)?[1]

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[1] " Rule 9.030 Jurisdiction of Courts.
"(a) Jurisdiction of Supreme Court
"(2) Discretionary Jurisdiction.
"(C) Questions of law certified by the Supreme Court of the

PARTIES TO THE PROCEEDING

The Petitioner is Jonathan I Rose, individually and as personal representative of the estate of Dora Brown Rose

The Respondents are Mt. Sinai Medical Center a/k/a Mt. Sinai hospital, Steve Sonenreich, CEO of Mount Sinai Hospital, Nathan Segel, M.D.

United States or a United States court of appeals that are determinative of the cause of action and for which there is no controlling precedent of the Supreme Court of Florida."

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OPINIONS BELOW

The unreported order by the trial court is set forth in appendix. The Court of Appeal made no oral ruling, or written opinion other than the one-word opinion "affirmed," and that re-hearing is denied.
The Florida Supreme Court dismissed the case on August 6th 2009 see appendix.

JURISDICTION

The Florida 3rd District Court of Appeal entered its order affirming the trial court on January 21st 2009, and entered its order denying re-hearing on June 29th 2009. The Florida Supreme Court decided its order, denying jurisdiction, and dismissing the case on August 6th 2009.

The United States Supreme Court has exclusive power to review the highest State court decisions involving federal issues under 28 U.S.C. Sec. 1257(a)[2] [3]

---

[2] (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United states, or where any title, right, privilege or immunity is specially set up or claimed under the constitution or treaties or statutes of, or any commission held or authority exercised under the United States. "

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the 14th Amendment to the Constitution of The United States.

U.S. Constitution Amendment XIV, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

---

[3] Jurisdiction to review Decisions of State Courts" by Cressman, Geller, Shapiro, Bishop Hartnett, Chapter 3.1 (f) "The all certiorari Jurisdiction Over State Courts" states at pg. 146-7: 'as the linear descendant of Section 25 now states, 28 U.S.C. Sec. 1257(a), final state court judgments or decrees involving federal questions 'may be reviewed by the Supreme Court by writ of certiorari'- and only by writ of certiorari."

Florida Statute 766.106. Is the malpractice statute under which the action was initially brought, but interpretation of the statute is not at issue in the instant case nor is its validity contested.

STATEMENT OF THE CASE

Petitioner (plaintiff below) is eyewitness, estate personal representative, Michigan attorney pro hac vice by consent in the Florida Court of Appeal and son, of decedent Dora Brown Rose.

Petitioner alleges his mother was buoyantly recovering from pneumonia (000339 2d Amended Complaint) on her doctor's first morning round after her afternoon hospital admission. (000339 2d Am. Complaint) Following that, the critical medicines due in the afternoon were forgotten all night, (000339 2d Amended complaint) and the illness relapsed. Rejecting an offer of active euthanasia, Dora Rose struggled through recovery in the midst of poor hospital hygiene. (000342 2d Amended Complaint) There was an 11 day interval (000341 2d Amended Complaint) between the diagnosed need for tube feeding and its implementation Dora Rose was made prone (000342 2d Amended Complaint) inviting aspiration pneumonia, and Dora Rose got aspiration pneumonia. Worse, the critical medicines due in the afternoon were again forgotten for the whole night for the second time (000342 2d Amended Complaint) The physician on learning this in his morning rounds exclaimed "Omigod!" (000343

2d Amended Complaint)

There are other severe malpractices alleged. No ordinary judgment call is alleged to be malpractice in 20/20 hindsight. A short successful hospitalization turned into a long, expensive failed one, but the litigation's first importance is on the two pneumonias, because in each, the forgetting to administer critical medicines in the afternoon was not discovered or corrected until the next morning, a death-dealing time interval. It is not the ordinary forgetting that is the worst hospital crisis, but instead the absence of proper systems for ascertaining and correcting missed doses (000346 2d Amended Complaint). The principal focus of the lawsuit was the failure of the hospital and its CEO to have an effective system to ascertain and correct critical error before correction is futile.

The Florida malpractice statute has modern tort reform limiting most damage awards for the elderly to the cost of the funeral. There are exceptions for punitive damages, also restricted. These caps also logically would deter contingent fee attorneys. The Florida malpractice statute is at FL statutes 766.106. There were state court issues that do not warrant the attention of the United States Supreme Court. Such as, Petitioner's failure to replace his outgoing lawyer within thirty days as ordered by the court. Dismissal of the case was appealed; Petitioner raised the issue of lack of willfulness required by Florida case law. Commonwealth Federal Savings and Loan Association v Tubero 569 So. 2d 1271 (FL 1990).

In the defense before the Court of Appeal,

defense raised under the right decision for the wrong reason, or tipsy coachman doctrine, de facto motions for summary judgment.

Petitioner responded that, the summary judgment issues alleged for the first time in the Court of Appeal would fail on a developed record that would be allowed under the "Oregon rule." Defense had not yet filled an answer in the case. This case was dismissed before much development.

PRESERVATION OF THE FEDERAL QUESTION

Petitioner adequately preserved the federal question of due process in this case in particular given the circumstances that there was no federal question or due process issue in the trial court nor at the time of filing Appellant's initial brief in the Court of Appeal nor prior to the time of Appellee filing the response brief in which the "right for the wrong reason" or "tipsy coachman" was first raised. Given that the court of Appeal dismissed the appeal with a one word per curiam "Affirmed" and dismissed the motion for rehearing with the word "Denied" and given the State Supreme Court dismissing the case before briefing.

Alternatively to granting certiorari this court should certify for the State Supreme Court the issue of whether Florida will adopt the Oregon rule set forth in the "Outdoor Media Dimensions Inc. vs State of Oregon" and if not, will the State Supreme Court require the Court of Appeal to issue at least a succinct opinion rather than one word

"Affirmed" in "tipsy coachman" cases.

Alternatively this Court should postpone action until development of the record by each party being allowed three depositions.

The purpose for a Petitioner preserving the federal question in State court is set out in *Rose v Lundy* 455 U.S. 509, 102 S. Ct. 1198, 71 L. ed 2d 379 (1982). "The exhaustion doctrine is principally designed to protect the state court's role in enforcement of federal law and prevent disruption of state judicial proceedings." Id at 518, S. Ct at 1203.

The court further stated: "Because it would be unseemly in our dual system of government for a federal district court to correct a state court conviction without an opportunity to the state courts to correct a constitutional violation, federal courts apply the doctrine of comity, which teaches that one court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent powers, and already cognizant of the litigation, have had an opportunity to pass upon the matter." (Citing Darr v Burford, 12 339 U.S. 200, 204, 70 S. Ct 587, 590, 94 L Ed. 761 (1950).

Petitioner in the Circuit Court was faced with no federal question. The issue was of violation of a court order to replace counsel. In the Court of Appeal the issue Appellant (Petitioner) raised was whether the Court violated state law that required a finding of willfulness or contumaciousness. Only at the defendants' (Respondents) response in the Court of Appeal did defendant (Respondent) raise "tipsy coachman" issues and in reply to that Appellant

(Petitioner) raised was whether the Court violated state law that required a finding of willfulness or contumaciousness. Only at the defendants' (Respondents) response in the Court of Appeal did defendant (Respondent) raise "tipsy coachman" issues and in reply to that Appellant (Petitioner) raised the difference between the Florida practice and the Oregon rule that restricts "Tipsy Coachman" when the record below might be differently developed. Due process was implicitly raised then and explicitly in a rehearing motion.

At Pg. 20 Of Petitioner's Court of Appeal rehearing motion Petitioner stated that the Oregon standard doesn't offend due process. At Pg. 21 Petitioner wrote "We want the Court to write an opinion which would provide the legal basis for Supreme Court review because the Court should review the tipsy coachman standard as relevant to this case and should adopt the standard in Oregon for Florida to ensure due process."

Par. 25 of Petitioner's "corrected Motion for Rehearing" in the Court of Appeal stated: "The tipsy coachman doctrine as applied by the Court denies Plaintiff's constitutional right to meaningful access to the Courts."

But the State Court of Appeal did not seek the desire to pass upon the matter but dismissed the appeal with a one-word opinion 'Affirmed" and

declined a motion for rehearing with the word "Denied."

Preservation of the question of federal due process was adequate but would have been made more so before the State Supreme Court, but the State Supreme Court dismissed the case before briefs could be timely filed.

One of the bases for State Supreme Court jurisdiction would be to advance a good faith extension or modification of existing law as to whether the Court of Appeal or the State Supreme Court is the gatekeeper to access to the state Supreme Court for determination of an important question. Another would be to ask the state Supreme Court to hold its discretionary jurisdiction decision in abeyance pending application to this Court as is being made here, for certification of an issue for state Supreme Court determination. Florida Rules of Appellate Procedure provide for Supreme Court review of important questions both after and during the pendency of a matter in the Court of Appeal, the rule explicitly providing that the Court of Appeal makes the certification of the importance of the issue in case of review during pendency in the Court of Appeal. The rule is silent but case law provides that the Court of Appeal is the determiner of the certification of the important issue after the Court of Appeal has determined the issue.

Williams v Florida 399 U.S. 78, 80, n.5 1970 mentions that decision of an intermediate state appellate court may be final and unreviewable, but Stratton v Stratton, 239 U.S. 55, 1915 provides that if there is discretionary review by the state Supreme

Court it must be sought. In the instant case Petitioner sought the review of the state Supreme Court, where due process issues were made ripe by the response brief in the Court of Appeal raising "tipsy coachman" issues.

If this Court finds the preservation of the due process issue inadequate or if it is insufficient that the Court of Appeal and Supreme Court seemed to not take up the issues raised by presentation of the Oregon rule in Petitioner's Court of Appeal reply and rehearing briefs, then this case is perfect for the U.S. Supreme Court to certify for consideration by the Florida Supreme Court the question, not heretofore decided by it: whether due process requires that in cases of the doctrine of "right decision for the wrong reason" or "tipsy coachman doctrine", Florida either adopt the Oregon rule In "Outdoor Media..." supra that tipsy coachman will not be used in cases where a record below could be developed as a different record; or at minimum that the Court of Appeal would be required to write a succinct opinion in tipsy coachman cases and not a one word affirmance.

REASONS FOR GRANTING PETITION

The United States Supreme Court should grant certiorari, or alternatively certify to the Florida Supreme Court to rule on the question presented to them. The "Right Ruling for the Wrong Reason"

judicial doctrine is sometimes called the "Tipsy Coachman" doctrine, named after a poem by Oliver Goldsmith, "Retaliation: a Poem, first cited in a case in "Lee v Porter," 63 Ga. 345. (Ga. 1879):

"The pupil of impulse, it forc'd him along,
His conduct still right, with his argument wrong;
Still aiming at honor, yet fearing to roam,
The coachman was tipsy, the chariot drove home."

The law shouldn't be based on the charm of poems, which can be intoxicating and distract from analysis. We shouldn't have to wait a century before dispatching charming poems to their appropriate nursery rhyme status.

The charm of the poem notwithstanding, it says nothing about the risks inherent to fairness in ruling that the lower court was right for the wrong reason – by an appellate court applying the right reason to fit a ruling, the court is not only failing in its own critical analysis of the case... it is depriving the litigants of their own critical analysis of the case. The Oregon Rule by honoring the right of the litigants to develop their different record to support the new rational for a ruling is restoring at least some of the critical analysis that the litigants, in all fairness, have a right to present.

The tipsy coachmen poem beneath its charm is a nihilistic device to allow judges to take shortcuts in making their rulings.

The "Tipsy Coachman" doctrine is highly criticized including in The Florida Bar Journal, Vol. 81, Number 7, July/August 2007 "Tipping the Ole Tipsy Coachman Over in His Grave - An Inequity of Appellate Review" by H. Michael Muniz. In the instant case, the doctrine was invoked by defense to inject de facto motions for summary judgment and an allegation of statute of limitations, into a response brief in the Court of Appeal, in a case of dismissal on a technicality. Real summary judgment motions made below would allow depositions and affidavits for development of the record.

The principal forensic effect of loading an appellate review of a technical dismissal with massive dispositive motions set up to be first heard in the Court of Appeal precluding record development, is to have these heard with half a chess board or less, in a short response brief and 10 minute oral argument without developed record. But if the effect is to crowd out and smother the merits of a systems malpractice case, then it is crowding out and smothering the important litigation, which in the instant case, is about systems malpractice affecting lives. Not all litigation is greedy, or trivial, and the appellate courts need to separate wheat from chaff by hearing the facts and arguments as properly developed.

The Oregon Rule mitigates the issue avoidance damage of the "right for the wrong reason" a/k/a "tipsy coachman" doctrine, and so does the requirement suggested here that the Court of Appeal

issue at least some sort of opinion in a tipsy coachmen case. At least this latter would identify the issue ruled upon and allow intelligent determination whether and what to file for re-hearing.

The Florida rule of unfettered tipsy coachman, and the Oregon rule precluding its application in cases where the Appellant might develop a different record below, create a disparity between State Supreme Courts that should be resolved by the United States Supreme Court.

The Oregon rule in "Outdoor Media Dimensions Inc. vs State of Oregon", Supreme Court of Oregon 20 P 3rd 180 (OR 2001) 1998, states "even if the record contains sufficient evidence to support an alternative basis for affirmance, if the losing party might have created a <u>different</u> (emphasis provided) record below had the prevailing party raised that issue, and the record could affect the disposition of the issue, then we will not consider the alternative basis for affirmance."

Florida by contrast has no such protection and its Supreme Court is starkly in contrast to Oregon's on the issue.

In Dade County School Board vs Radio Station WQBA, et al, 731 So. 2d 638, 1999 Fla. Lexis 117; 24 Fla. L. Weekly S 216, the Florida Supreme Court in marked distinction from the Oregon rule in "Outdoor Media..." supra, states "...if a trial court

reaches the right result, but for the wrong reasons, it will be upheld if there is any basis which would support the judgment in the record. This Court has adhered to this principle on many other occasions."

H. Michael Muniz writes in the Florida Bar Journal Vol. 81 No 7 July/August 2007, "Tipping the Ole Tipsy Coachman Over in his Grave – an Inequity of Appellate Review", "Virtually every Florida appellate court has described the tipsy coachman doctrine as a doctrine of appellate efficiency" cites at footnote 70, "and also reasoned that the tipsy coachman arises from the presumption of correctness with which the judgment of the trial court is clothed" footnote 71. : At least one Florida court has described it as the pragmatic Tipsy Coachman rule" citing at footnote 72, Houssami v Nofal, 578 So. 2d 495, 497 (Fla. 5th DCA 1991). Muniz comments: "One is compelled to wonder when appellate efficiency or pragmatism came to exceed or overcome the search for truth, justice and fundamental constitutional rights."

This Court should grant certiorari and for ultimate relief in this case, determine that the Oregon rule is the correct rule in that it goes further to provide fundamental fairness. Additionally or in the alternative, this Court should rule that in tipsy coachman cases, the appellate court should provide a written opinion, at least tersely setting out its ruling.

Providing an opinion in one word "Affirmed", in a

tipsy coachman case adds insult to injury to the litigants and lawyers, who are not apprised of whether the reason for the affirmance was the argument as made below, or the argument as made by the tipsy coachman doctrine. Knowing the basis for the ruling would assist the litigant and counsel to determine whether a motion for rehearing should be made, and its basis if appropriate.

ALTERNATIVELY THE COURT SHOULD ASK THE FLORIDA SUPREME COURT TO ANSWER THE ISSUES PRESENTED.

Citing Florida rules of Appellate Procedure: Rule 9.030 Jurisdiction of Courts in pertinent part, allows and encourages the United States Supreme Court to certify issues to the Florida Supreme Court.

"(a) Jurisdiction of Supreme Court
"(2) Discretionary Jurisdiction.
"(C) Questions of law certified by the Supreme Court of the United States or a United States court of appeals that are determinative of the cause of action and for which there is no controlling precedent of the Supreme court of Florida"

Petitioner asks the United States Supreme Court in alternative or addition to granting certiorari on the questions presented, to certify to the Florida Supreme Court this question of law: "If Florida does not adopt the 'Oregon rule" – set forth in Outdoor Media Dimensions Incorporated, an Oregon corporation vs State of Oregon et al Supreme Court

of Oregon 20 P 3rd 180 (Or. 2001) 1998, i.e. if Florida continues to allow its Courts of Appeal to affirm a trial court ruling finding it "right for the wrong reason" without the Oregon protection disallowing that doctrine when the record below could be developed differently than that presented in the Court of Appeal, should the Florida Court of Appeal write at least a terse opinion and not only a one-word "affirmed" in granting the affirmance as a matter of fairness? Put another way, the Florida Supreme Court would be asked to consider ruling whether Florida state court appellants would either have the benefit of being able to develop the record with depositions and affidavits before the Court of Appeal affirms based on the "right ruling for the wrong reason" doctrine or at least the Appellant would be protected by the Court of Appeal being expected to write some sort of opinion even a terse one, in cases where it applies the doctrine.

In this manner Appellant and Appellee as well could better expect the Court of Appeal to use critical analysis in arriving at the opinion; and would be able in appropriate cases to intelligently exercise the right to seek rehearing not blindly but on the ruling actually made if it appeared to have some fundamental error.

The respect for the judiciary is higher when litigants and attorneys see the merits decided according to the law, applying critical analysis. Time saving devices for judges compromises this integrity. The integrity as a furtherance of judicial quality is

replaced in part with the *appearance* of quality as lawyers are expected to be silent critics if judges sidestep an issue and write a per curiam one word affirmance. This might not matter a lot in a case that is just about money, such as some malpractice and other tort cases, but in a case of systems malpractice, any lack of critical analysis of appellate courts is known in the hospital boardrooms of those cutting corners allowing the systems negligence. The CEOs and their associates should not be facilitated to prefer forensic solutions, to critical systems changes.

CONCLUSION

We request this honorable court to grant certiorari for the forgoing reasons. Dated: 11/3/2009
Or certify the question to the Florida Supreme Court.

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APPENDIX (A)

IN THE CIRCUIT COURT OF 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI DADE COUNTY, FLORIDA

Case No: 05 12074 CA 15

Rose

v)
Segel ET AL)
)
)
)
)
_____)

FINAL ORDER OF DISMISSAL

THIS CAUSE having come on to be heard on Defendant's Dr. Segel's Amended Motion for final judgment of dismissal and the Court having heard argument of counsel, and being otherwise advised in the Premises, it is hereupon,

ORDERED AND ADJUDGED that said Motion be, and the same is hereby granted a final judgment of dismissal is entered for failure of plaintiff to retain counsel in violation of the Court's December 13th 2006 order DONE AND ORDERED in chambers, at

This 7th day of March 2007

(Mindy S Glazer's Signature)

County (sic) Judge

Copies furnished:

Jonathan I Rose, ESC.
Steve Solomon, ESC.
(unintelligible) ESC.

APPENDIX (B)

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION
CASE NO: 05-12074 CA15

Jonathan I. Rose as personal
Representative of Dora Brown Rose

Plaintiff(s),

vs.

Mt. Sinai Medical Center
a/k/a Mount Sinai Hospital

Defendant(s).

_____/

ORDER GRANTING DEFENDANT'S

MSMC"s and Steve Sonenreich's
motion to dismiss

THIS CAUSE having come on to be heard on March 7 2007 On Plaintiff's/Defendant's Motion to dismiss this complaint with prejudice and for sanctions

and the Court having heard argument of counsel and being otherwise advised in the premises it is hereupon

ORDERED AND ADJUDGED that said motion be, and the same is hereby Granted final order of dismissal is hereby entered because of failure by plaintiff to retain counsel in violation of this court's December 13, 2006 order

DONE AND ORDERED in Chambers at Miami-Dade County Florida 7th day of March 2007

Mindy S Glazer's signature

CIRCUIT COURT JUDGE

Copies furnished to: Counsel of record

APPENDIX (C)

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION
CASE NO.: 05-12074 CA 15

JONATHAN I. ROSE, individually
And as Personal Representative of the Estate of
Dora Brown Rose,
deceased,

Plaintiff,

vs.

MOUNT SINAI MEDICAL CENTER
a/k/a MOUNT SINAI HOSPITAL AL,
NATHAN SEGEL M.D., AND
STEVEN SONENREICH, M.D., CEO
of Mount Sinai Hospital,

Defendants,
_____/

ORDER DENYING PLAINTIFF'S MOTION FOR REHEARING

THIS CAUSE came before the Court on the Motion for Rehearing filed by the Plaintiff, JONATHAN I. ROSE, individually and as Personal Representative of the Estate of Dora Brown Rose,

deceased, on the Order of Dismissal entered March 7, 2007, and the court having reviewed the Motion and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that the Plaintiff's Motion for Rehearing is DENIED.

DONE AND ORDERED in Miami-Dade County, Florida on this APR 12 2007day of April, 2007.

Mindy S. Glazer
Circuit Court Judge

_____
Circuit Judge

Copies furnished to:
Jonathan I. Rose
Scott E. Solomon
Richard T. Woulfe

APPENDIX (D)

Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed January 21, 2009.
Not final until disposition of timely filed motion for rehearing

---

No. 3d07-1269
Lower Tribunal No. 05-12074

Jonathan I. Rose, individually and as Personal Representative of the Estate of Dora Brown Rose, deceased,
Appellant,

vs.

Mount Sinai Medical Center a/k/a Mount Sinai Hospital, Nathan Segel, M.D., and Steve Sonenreich, M.D.,I,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Mindy S. Glazer, Judge.

Jonathan I. Rose, (Michigan) in proper person, and Charles M. Baron, for appellant.

Bunnell Woulfe Kirschbaum Keller & Gregoire, Nancy W. Gregoire and Richard T. Woulfe, (Ft. Lauderdale), for appelle, Nathan Segel, M.D.; Falk, Waas, Hernandez, Cortina, Solomon & Bonner and Paul H. Field, for appellees, Mount Sinai Medical Center and Steve Sonenreich, M.D..

Before WELLS, SHEPHERD, and SUAREZ, JJ.

PER CURIAM.

Affirmed.

APPENDIX (E)

7/28/2009 16:00 3059339992 CHARLES M BARON
PAGE 02/02

IN THE DISTRCIT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2009
JUNE 29, 2009

JONATHAN I. ROSE, ETC.,CASE NO. : 3D07-1269
ET AL.,
Appellant(s) / Petitioner(s),

vs.

LOWER TRIBUNAL
MOUNT SINAI MEDICAL NO. 05-12074
CENTER, ETC., ET AL.,
Appellee(s) / Respondent(s).

Upon consideration, appellants' corrected motion for rehearing, written opinion and to certify appellate questions is hereby denied.

Upon consideration of the motion for attorney's fees and costs filed by appellee Mount Sinai Medical Center a/k/a Mount Sinai Hospital, it is ordered that said motion is hereby denied.

WELLS, SHEPHERD AND SUAREZ, JJ., concur
(Seal of Court of Appeal of Florida)

cc:
Charles M. Baron
Jonathan I. Rose
Norman M. Waas
Paul H. Field
Richard T. Woulfe

APPENDIX (F)

Supreme Court of Florida

THURSDAY, AUGUST 6, 2009

CASE NO: SC09-1393
Lower Tribunal No(s) 3D07-1269, 05-12074

JONATHAN I. ROSE, ETC.
vs.
MOUNT SINAI MEDICAL CENTER, ETC., ET AL.

Petitioner(s) Respondent(s)

Having determined that this Court is without jurisdiction, this case is hereby dismissed. See Stallworth v. Moore, 827 So. 2d 974 (Fla. 2002); Jenkins v. State, 385 So. 2d 1356 (Fla. 1980)

No motion for rehearing will be entertained by the Court.

A True Copy
Test:

(Thomas D. Hall, Clerk of Supreme Court of Florida's signature)
(Supreme Court of Florida Seal)

kb
Served:

JOSHUA R. FINK
RICHARD T. WOULFE
NORMAN M. WAAS
PAUL H. FIELD
HON. MARY CAY BLANKS, CLERK
HON. HARVEY RUVIN, CLERK
HON. MINDY SUE GLAZER, JUDGE

APPENDIX (G)

(Portion of Second Amended Complaint)

9. The wrongful conduct as exemplified without limitation to the following, by attempt to induce No Code and to do active euthanasia after malpractice but while there was a chance of recovery and there was a first recovery, and by the allowance of a second pneumonia and by failure to get the antibiotics administered a second time, and by refusal to let a physician...have access to his mother's chart, and by not having available physician for crisis with the bipap until the E.R. physician rescue against ...Sonenreich's protocol; and by the security guard responding to the question "is there always a party in the ICU, " with the response that he would not say as he does not want lawsuits...and by the hospital worker making the bed prone facilitating aspiration..."

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16. In the ensuing days leading up to Dora rose's death she would be subjected to multiple, severe systemic malpractices.

17. "Systemic" in the preceding paragraph means that there were systems failures. The principal but not the only systems failure was that there was no patient centered management of a case. That is there was no intelligent qualified person engaged in effective ongoing management of the patient's care:

knowing the orders and intended orders, the changing conditions, and the implementation of the orders and any errors or omissions for correction, and prompt securing of intelligent qualified attention to changes.

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35. During Dora Rose's stay at Mount Sinai, hygiene was sub-optimal. Staffers would not always change gloves when going from one patient room to another and staffers would not aalways change gloves when going from the lavatory to the patient.

36. Dora Rose got a new pneumonia in the hospital.

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40. ...Jonathan stated that the I.V. request didn't get on the chart. The physician threw his hands to his face and said "Omigod" or similar.

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